



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

August 29, 1957

Honorable Raymond W. Vowell
Acting Executive Director
Board for Texas State Hospitals
and Special Schools
Austin, Texas

Opinion No. WW-249

Re: Whether the various State Hospitals may furnish food, lodging and laundry to its employees and charge therefor in accordance with Section 3 of Article II of House Bill 133, Acts 55th Legislature, Regular Session, chapter 385, page 925, and related question.

Dear Mr. Vowell:

Your request for an Opinion, dated August 20, 1957, submits the following two questions for our consideration:

1. May a State hospital furnish food, lodging and laundry to its employees and charge for same in accordance with Section 3 of Article II of House Bill 133, Acts 55th Legislature?
2. If in your opinion the foregoing question should be answered in the affirmative, then is that part of Section 3 of Article II of House Bill 133, which re-appropriates monies collected for these services to the item "other operating expenses" valid?

Your letter points out that the Comptroller of Public Accounts has taken the position that the matter of furnishing and charging for meals by the various hospitals under your Board's jurisdiction is properly a subject for general legislation and that the Board for Texas State Hospitals and Special Schools obtains no authority with respect thereto by reason of a special provision in the Biennial Appropriation Bill for the ensuing Biennium. You further state that if the interpretation of the Comptroller of Public Accounts is correct

the entire hospital system of Texas will be deprived of approximately \$800,000.00 in operating funds during the next biennium.

Section 3 of Article II of House Bill 133, Acts 55th Legislature, Regular Session, Chapter 385, at page 925 (same being a part of the Biennial Appropriation Act) provides as follows:

"Services to employees and guests. In order to reimburse equitably the appropriation items in this Article from which expenditures are made for services to employees and guests, the following reimbursement rates and rules shall apply:

"Services furnished by the institutions to employees shall be valued at not less than the following:

- "\$30 per month for meals for adults
- \$15 per month for meals for children, ages 2 through 15
- \$ 5 per month for laundry
- \$15 per month for lodging, excluding medical personnel or hospital system
- \$15 per month per room for the first room for lodging of medical personnel of hospital system and \$10 per month per room for each additional room

"Collection for services rendered employees and guests shall be made by a deduction from the recipient's salary or by cash payment in advance. Such deductions and other receipts for these services from employees and guests are hereby reappropriated to the 'Other Operating Expenses' of the institution. Refunds for excess collections shall be made from the appropriation to which the collection was deposited.

"Employees residing away from the grounds of the institutions in which they are employed shall pay cash for only such meals at the institutions as they may actually take, and there shall be no deductions from the regular salary payment due employees of the respective institutions for institutional services or emoluments not actually received by said employees."

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General legislation constitutes a separate subject and cannot be included within a general appropriation bill. Article III, Section 35 of the Constitution of Texas; Moore et al v. Sheppard, 144 Tex. 537, 192 S.W.2d 599; Attorney General's Opinion WW-96 (1957). A rider attached to a general appropriation bill cannot repeal, modify or amend an existing general law. Conley v. Daughters of the Republic, 151 S.W. 877; Linden v. Finley, 92 Tex. 451, 49 S.W. 578. See page 10 of Attorney General's Opinion No. V-1254 for numerous Attorney General's Opinions so holding.

We must first consider whether Section 3 of Article II of the Biennial Appropriation Bill falls within the prohibitions of the foregoing rules.

We agree with the Comptroller of Public Accounts that the authorization for the various state hospitals to furnish the foregoing services and to make charges therefor must be given by general law and cannot properly be covered by a rider to the general appropriation bill. In this connection, there is no statutory or constitutional provision which specifically supplies such authorization. It remains for us to consider whether such authorization may reasonably be implied from the various general statutes concerning the establishment and operation of the affected institutions.

Article 3174b of Vernon's Civil Statutes creates the Board for Texas State Hospitals and Special Schools, and Section 2 thereof prescribes the duties of the Board in the following terms:

" . . . Effective September 1, 1949, the control and management of, and all rights, privileges, powers, and duties incident thereto . . . of the Texas State Hospitals and Special Schools which are now vested in and exercised by the State Board of Control shall be transferred to, vested in, and exercised by the Board for Texas State Hospitals and Special Schools. . . ."

Section 5 of said Article provides:

" . . . The Board shall have the authority to promulgate such rules and regulations as it deems proper for the efficient administration of this Act. . . ."

An examination of the various legislative enactments providing for the establishment and operation of the several

institutions now under the jurisdiction of the Board reveals that such statutes generally do little more than to set forth the purposes of each institution in the most general terms. It is readily apparent that if the Board in the administration of the affairs of the various institutions was restricted to the exercise of only those powers specifically enumerated by general legislation, it would be without power to attain its statutory purposes. The Legislature has vested "control and management of, and all rights, privileges, powers and duties incident thereto" in said Board. This is a clear indication of legislative intent that the Board for Texas State Hospitals and Special Schools should be vested with authority to determine, by the exercise of sound discretion in the light of prevailing circumstances, what powers must be exercised and duties performed by said Board in the proper and efficient accomplishment of the legislative mandate, subject to the qualification that there must be a reasonable relationship between the activity undertaken and the statutory purposes of the particular institution.

It is our understanding that the furnishing of meals, laundry, services, etc., to employees and guests is not treated by the Board as a commercial or profit-making venture, but to the contrary, it is undertaken as a function incidental to and reasonably necessary for the proper administration of the state hospital system. As you have pointed out in your letter, many of the state hospitals are many miles from town, and private facilities which supply the questioned services are not conveniently available.

In view of the foregoing, it is our opinion that Section 3 of Article II of the general appropriation act, is in all respects a legitimate and constitutional exercise of legislative authority. The authorization for the Board for Texas State Hospitals and Special Schools to furnish the questioned services to employees and guests is not derived from this section of the general appropriation bill, but from the general laws, as above set forth, pertaining to the operation of the state hospitals. In fact, the general appropriation bill does not purport to be the source of such authority, but to the contrary, we think that the language used therein indicates recognition by the Legislature that such authority exists independently of said provision.

We believe that under the circumstances, Section 3 of Article II, could properly specify the amount to be charged for each item of service and reappropriate the amount collected to the "Other Operating Expenses" of the particular institution involved. Although the latter are matters not covered by general law, we think same are clearly matters necessarily connected

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with and incidental to the appropriation and use of the funds and do not conflict with or amount to general legislation.
Conley v. Daughters of Republic, supra.

You are therefore advised:

1. That the hospitals under the supervision and control of the Board for Texas State Hospitals and Special Schools may furnish food, lodging and laundry to its employees, where the Board in the exercise of sound discretion has determined that the furnishing of such services is incidental to and reasonably necessary for the proper and efficient administration and functioning of the respective hospitals. Charges shall be made for such services and the funds realized therefrom re-appropriated and used in accordance with Section 3 of Article II of House Bill 133.

2. That portion of Section 3 of Article II of House Bill 133, which re-appropriates monies collected for these services to the item "Other Operating Expenses" is valid.


SUMMARY

The Hospitals under the supervision and control of the Board for Texas State Hospitals and Special Schools may furnish food, lodging and laundry to its employees, where the Board in the exercise of sound discretion has determined that the furnishing of such services is incidental to and reasonably necessary for the proper and efficient administration and functioning of the respective hospitals. Charges shall be made for such services and the funds realized therefrom appropriated and used in accordance with Section 3 of Article II of House Bill 133, Acts 55th Legislature, Regular Session, 1957, Chapter 385, at page 925.

That portion of Section 3 of Article II of House Bill 133, which re-appropriates monies collected for these services to the item "Other Operating Expenses" is valid.

Very truly yours,

WILL WILSON
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By 
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APPROVED:

OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL

BY: Geo. P. Blackburn